

Item No. 5.	Classification: Open	Date: 18 July 2019	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Bhinder Off Licence, 149 Peckham High Street, London SE15 5SL	
Ward(s) or groups affected:		Peckham	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made on behalf of Southwark Council's trading standards service under Section 51 of the Licensing Act 2003 (the Act) for the review of the premises licence held by Parwinder Kaur and Jagdish Singh Bhinder in respect of the premises known as Bhinder Off Licence, 149 Peckham High Street, London, SE15 5SL
2. Notes:
 - a) The grounds for the review are stated in paragraph 14 of this report. A copy of the premises licence review application is attached as Appendix A.
 - b) The application for review of the premises licence is supported in representations submitted by two responsible authorities. Copies of the representations are attached as Appendix B. Details of the representations are provided in paragraphs 17 to 19 of this report.
 - c) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix C. A map showing the location of the premises is attached to this report as Appendix D.
 - d) A copy of the council's approved procedure for hearings of the sub-committee in relation to an application made under the Licensing Act 2003, along with a copy of the hearing regulations, has been circulated to all parties to the meeting.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 provides a licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment
4. Within Southwark, the licensing responsibility is wholly administered by this council.
5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:

- The prevention of crime and disorder
 - The promotion of public safety
 - The prevention of nuisance
 - The protection of children from harm.
6. In carrying out its licensing functions, a licensing authority must also have regard to:
- The Act itself
 - The guidance to the act issued under Section 182 of the Act
 - Secondary regulations issued under the Act
 - The licensing authority's own statement of licensing policy
 - The application, including the operating schedule submitted as part of the application
 - Relevant representations.
7. The applications process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies. The application must also be advertised at the premises and in the local press. The responsible authorities and other persons within the local community may make representations on any part of the application where relevant to the four licensing objectives.
8. The premises licence once issued remains valid for the life of the business unless surrendered or revoked. However, under section 51 of the Act it remains open to any responsible authority or other person to apply to the local licensing authority for a review of the premises licence where there are ongoing concerns regarding one or more of the four stated licensing objectives.

KEY ISSUES FOR CONSIDERATION

The premises licence

9. The premises licence allows the provision of licensable activities as follows:
- The sale of alcohol to be consumed off the premises
 - Monday to Sunday 00:00 - 00:00 (24 hour sale of alcohol)
10. The opening hours of the premises are as follows:
- Monday to Sunday 00:00 - 00:00 (24 hour opening).
11. The licence is subject to the mandatory conditions set down under the Act and further conditions consistent with the operating schedule submitted with the application for the licence. A copy of the full premises licence is attached to this report as Appendix C.

Designated premises supervisor (DPS)

12. The current Designated Premises Supervisor (DPS) specified in respect of the licence is Jagdish Singh Bhinder. Jagdish Singh Bhinder holds a personal licence issued by the London Borough of Southwark.

The review application

13. On 28 May 2019 an application was submitted on behalf of Southwark Council's trading standards service under Section 51 of the Licensing Act 2003 for the review of the premises licence held by Parwinder Kaur and Jagdish Singh Bhinder in respect of the premises known as Bhinder Off Licence, 149 Peckham High Street, London SE15 5SL.
14. The review application was submitted in respect of the prevention of crime and disorder licensing objective and relates to an alleged offence witnessed at the premises on 12 March 2019 as follows:
 - The sale, display or offer for sale of beers / lagers with an alcohol by volume (ABV) of more than 6.5% without written authority from the Police Licensing Unit. This is an alleged breach of condition 845 of the premises licence issued in respect of the premises, and constitutes a possible contravention of section 136 of the Licensing Act 2003.
15. Full details of the grounds for the review are provided within the copy of the application for the review which is attached to this report as Appendix A.
16. The application invites the licensing sub-committee to consider all options open to the sub-committee; however the applicant suggests that particular consideration is given to condition 845 and exemptions that may be allowed in respect of condition 845. The applicant proposes that condition 845 should specify any exemptions to condition 845, and that if the licensee's wish to specify further exemptions to condition 845 they should do so by submitting a minor variation application that can be considered by all responsible authorities.

Representations from responsible authorities

17. The Metropolitan Police Service and this council's public health authority have submitted representations in support of the review application. Copies of the representations are attached to this report in Appendix B.
18. The Metropolitan Police Service's representation recommends that the premises licence be revoked.
19. The public health authority recommends an amendment to condition 845 and also that the hours permitted for the sale of alcohol at the premises be reduced.

Representations from other persons

20. No representations have been submitted by other persons.

Operating history

21. A premises licence was issued in respect of the premises to Jagjot Singh Lidder on 11 January 2006. The DPS specified in respect of the licence was Kuldip Singh Lidder.
22. On 2 August 2006 an application was submitted to specify Jagjot Singh Lidder as the DPS in respect of the premises. An amended licence stating Jagjot Singh Lidder as the DPS was issued on 16 August 2006.

23. On 19 March 2009 a licensing inspection of the premises was undertaken. The person in charge of the premises at the time of the inspection was Jagdish Singh Bhinder. The premises were found to be being operated compliantly.
24. On 19 January 2011 a licensing inspection of the premises was undertaken. The person in charge of the premises at the time of the inspection was Jagdish Singh Bhinder. Two breaches of the premises licence issued in respect of the premises were noted during the inspection in that a personal licence holder was not present at the premises and a refusal book wasn't available at the premises.
25. On 14 March 2011 a re-inspection of the premises was undertaken. The premises were found to be being operated compliantly.
26. On 20 February 2015 a licensing inspection of the premises was undertaken. The person in charge of the premises at the time of the inspection was Jagdish Singh Bhinder. The premises were found to be being operated compliantly.
27. On 11 March 2015 an application, to have immediate effect, was submitted to transfer the licence to Jagdish Singh Bhinder and Parwinder Kaur. On the same date an application, to have immediate effect, was submitted to specify Jagdish Singh Bhinder as the DPS of the premises. Both applications were granted and an amended licence was issued on 11 March 2015.
28. On 4 May 2016, an application was made on behalf of Southwark Council's trading standards service under Section 51 of the Licensing Act 2003, for a review of the premises licence held by Parwinder Kaur and Jagdish Singh Bhinder in respect of the premises known as Bhinder Off Licence 149 Peckham High Street, London SE15 5SL.
29. On 11 June 2016 an ad-hoc licensing visit to the premises was undertaken. At the time of the visit the premises were found to be being operated compliantly.
30. On 28 June 2016 a licensing sub-committee hearing was held to consider the review application submitted on 4 May 2016. The decision of the licensing sub-committee was to suspend the premises licence issued in respect of the premises for two weeks and to impose various conditions on the licence, including condition 845 to which this review application specifically relates. A copy of the notice of decision relating to the licensing sub-committee hearing of 28 June 2016 is attached to the trading standards review application in Appendix A.
31. On 12 March 2019 trading standards and licensing officers visited the premises and the sale, display or offer for sale of beers / lagers with an alcohol by volume (ABV) of more than 6.5% without written authority from the police licensing unit was observed. This is an alleged breach of condition 845 of the premises licence issued in respect of the premises and constitutes a possible contravention of section 136 of the Licensing Act 2003.
32. On 28 May 2019, an application was made on behalf of Southwark Council's trading standards service under Section 51 of the Licensing Act 2003, for a review of the premises licence held by Parwinder Kaur and Jagdish Singh Bhinder in respect of the premises known as Bhinder Off Licence 149 Peckham High Street, London SE15 5SL.

The local area

33. A map of the area is attached to this report as Appendix D. The premises are identified by a black diamond at the centre of the map. The following licensed premises are also shown on the map:

The Red Bull, 116 Peckham High Street, London SE15 5ED licensed for:

- The provision of live music, recorded music and the sale of alcohol for consumption off the premises:
 - Sunday to Thursday from 09:00 to 23:00
 - Friday and Saturday from 09:00 to 00:00 (midnight)
- The sale of alcohol for consumption on the premises:
 - Sunday to Thursday from 09:00 to 22:30
 - Friday and Saturday from 09:00 to 23:30
- The provision of late night refreshment:
 - Friday and Saturday from 23:00 to 00:00

Payless, 121-125 Peckham High Street, London SE15 5SF licensed for:

- The sale of alcohol to be consumed off the premises:
 - Sunday to Thursday from 06:00 to 01:00
 - Friday and Saturday from 06:00 to 02:00

Peckham News, 133 Peckham High Street, London SE15 5SI licensed for:

- The sale of alcohol to be consumed off the premises:
 - Monday to Sunday from 09:00 to 23:00

The Clayton Arms, 1 Clayton Road, London SE15 5JA licensed for:

- The provision of films, indoor sporting events, recorded music and the sale of alcohol for consumption on or off the premises:
 - Monday to Thursday from 10:00 to 00:00
 - Friday and Saturday from 10:00 to 01:00
 - Sunday from 11:00 to 00:00
- The provision of live music:
 - Monday to Saturday from 10:00 to 23:00
 - Sunday from 11:00 to 23:00
- The late night refreshment:
 - Sunday to Thursday from 23:00 to 00:00
 - Friday and Saturday from 23:00 to 01:00.

Southwark council saturation policy for Peckham

34. Council assembly approved the introduction of a special policy for Peckham on the cumulative impact of a concentration of licensed premises (saturation policy) on 12 October 2011. This was renewed in March 2019 when full council assembly approved the 2019 - 2021 Statement of Licensing Policy.
35. The decision to introduce saturation policy was taken with regard to the committee's concern over rising trends of late night alcohol related violence against the person and late night disorder and rowdiness associated with late night licensed premises in the area.
36. The effect of this special policy is that is to create a presumption that applications for new premises licences or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.
37. The premises has been advised to address the committees concerns around cumulative impact at the meeting.

Southwark council statement of licensing policy

38. Council assembly approved Southwark's statement of licensing policy 2016-20 on 25 November 2015. Sections of the statement that are considered to be of particular relevance to the sub-committee's consideration are:
 - Section 3 - Purpose and Scope of the Policy. This reinforces the four licensing objectives and the fundamental principles upon which this Authority relies in determining licence applications.
 - Section 5 – Determining Applications for Premises Licences and Club Premises certificates. This explains how the policy works and considers issues such as location; high standards of management; and the principles behind condition setting.
 - Section 6 – Local Cumulative Impact Policies. This sets out this authority's approach to cumulative impact and defines the boundaries of the current special policy areas and the classifications of premises to which they apply. To be read in conjunction with Appendix B to the policy.
 - Section 7 – Hours of Operation. This provides a guide to the hours of licensed operation that this Authority might consider appropriate by type of premises and (planning) area classification. To be read in conjunction with Appendix B to the policy.
 - Section 8 – The Prevention of Crime and Disorder. This provides general guidance on the promotion of the first licensing objective.
 - Section 9 – Public Safety. This provides general guidance on the promotion of the second licensing objective.

- Section 10 – The Prevention of Nuisance. This provides general guidance on the promotion of the third licensing objective.
 - Section 11 – The Protection of Children from Harm. This provides general guidance on the promotion of the fourth licensing objective.
39. The purpose of Southwark’s statement of licensing policy is to make clear to applicants what considerations will be taken into account when determining applications and should act as a guide to the sub-committee when considering the applications. However, the sub-committee must always consider each application on its own merits and allow exceptions to the normal policy where these are justified by the circumstances of the application.

Resource implications

40. There is no fee associated with this type of application.

Consultation

41. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003.

Community impact statement

42. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

43. The sub-committee is asked to determine, under Section 51 of the Licensing Act 2003, following an application, made under Section 51 of the same act, for a review of premises licence. At any stage, following the grant of a premises licence, a responsible authority or any other person may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.
44. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

45. Under Section 52 the licensing authority must hold a hearing to determine the review and any relevant representations.
46. The four licensing objectives are:
- The prevention of crime and disorder
 - The protection of public safety
 - The prevention of nuisance
 - The protection of children from harm.
47. Each objective must be considered to be of equal importance. The authority must, having regard to the application and any relevant representations, take such of the

following steps as it considers appropriate for the promotion of the licensing objectives. The steps are to:

- Modify the conditions of the licence by altering, omitting or adding any condition
 - Exclude a licensable activity from the scope of the licence
 - Remove the designated premises supervisor
 - Suspend the licence for a period not exceeding three months
 - Revoke the licence.
48. For the purpose of determining a relevant representation under section 52 of the Act a “relevant representation” means representations which:
- Are relevant to one or more of the licensing objectives
 - Are made by the holder of the premises licence, a responsible authority or an other person within the prescribed period
 - Have not been withdrawn
 - If made by an other person (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.
49. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
50. The authority may decide that no action is necessary if it finds that the review does not require it to take any steps appropriate to promote the licensing objectives.
51. In deciding what remedial action if any it should take, the authority must direct its mind to the causes or concerns that the representations identify. The remedial action should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
52. It is of particular importance that any detrimental financial impact that may result from a licensing authority’s decision is appropriate and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

Reasons

53. Where the authority determines an application for review it must notify the determination and reasons why for making it to:
- The holder of the licence
 - The applicant
 - Any person who made relevant representations
 - The chief officer of police for the area (or each police area) in which the premises are situated.

Hearing procedures

54. Subject to the licensing hearing regulations, the licensing committee may determine its own procedures. Key elements of the regulations are that:
- The hearing shall take the form of a discussion led by the authority. Cross examination shall not be permitted unless the authority considered that it is required for it to consider the representations
 - Members of the authority are free to ask any question of any party or other person appearing at the hearing
 - The committee must allow the parties an equal maximum period of time in which to exercise their rights to:
 - Address the authority
 - If given permission by the committee, question any other party.
 - In response to a point which the authority has given notice it will require clarification, give further information in support of their application.
 - The committee shall disregard any information given by a party which is not relevant:
 - To the particular application before the committee, and
 - The licensing objectives.
 - The hearing shall be in public, although the committee may exclude the public from all or part of a hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in private
 - In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.
55. This matter relates to the review of the premises licence under section 51 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

Council's multiple roles and the role of the licensing sub-committee

56. Sub-committee members will note that, in relation to this application, the council has multiple roles. Council officers from various departments have been asked to consider the application from the perspective of the council as authority responsible respectively for environmental health, trading standards, health and safety and as the planning authority.
57. Members should note that the licensing sub-committee is meeting on this occasion solely to perform the role of licensing authority. The sub-committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, members should disregard the council's broader policy objectives and role as statutory authority in other contexts. Members must direct

themselves to making a determination solely based upon the licensing law, guidance and the council's statement of licensing policy.

58. As a quasi-judicial body the licensing sub-committee is required to consider the application on its merits. The sub-committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant. The licensing sub-committee must give fair consideration to the contentions of all persons entitled to make representations to them.
59. The licensing sub-committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.
60. Members will be aware of the council's code of conduct which requires them to declare personal and prejudicial interests. The code applies to members when considering licensing applications. In addition, as a quasi-judicial body, members are required to avoid both actual bias, and the appearance of bias.
61. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities.
62. Under the Human Rights Act 1998, the sub committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision. The sub-committee has a duty under section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the borough.
63. Other persons, responsible authorities and the applicant have the right to appeal the decision of the sub-committee to the magistrates' court within a period of 21 days beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against.

Guidance

64. Members are required to have regard to the Home Office guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

Strategic Director of Finance and Governance

65. The head of community safety and enforcement has confirmed that the costs of this process are borne by the service.

BACKGROUND DOCUMENTS

Background papers	Held At	Contact
Licensing Act 2003 Home Office revised guidance Secondary Regulations Statement of Licensing Policy Various papers from the premises file	Licensing Unit Hub 1 Third Floor 160 Tooley Street SE1 2TZ	Kirty Read Phone number: 020 7525 5748

APPENDICES

No.	Title
Appendix A	Review application
Appendix B	Representations submitted by responsible authorities
Appendix C	The premises licence
Appendix D	Map of area

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Wesley McArthur, Principal Licensing Officer	
Version	Final	
Dated	3 July 2019	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team	4 July 2019	